

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 26, 2005

STATE OF TENNESSEE v. HOWARD C. BANKSTON

Appeal from the Criminal Court for Hamilton County
No. 226489 Rebecca Stern, Judge

No. E2005-00415-CCA-R3-CO - Filed August 17, 2005

The Defendant, Howard C. Bankston, was convicted of felony failure to appear and sentenced to four years in the Tennessee Department of Correction, suspended. The Defendant's probation was subsequently revoked. The Defendant claims to have filed a petition for post-conviction relief, and claims that the trial court dismissed his petition. Neither the Defendant's petition nor an order disposing of same is in the record before us. Because the record contains no final order from which the Defendant may appeal, we dismiss the Defendant's appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

DAVID H. WELLES, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and J.C. MCLIN, J., joined.

Howard C. Bankston, Clifton, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; David H. Findley, Assistant Attorney General; and Bill Cox, District Attorney General, for the appellee, State of Tennessee.

OPINION

The Defendant pled guilty on March 21, 2000, to one count of felony failure to appear. See Tenn. Code Ann. § 39-16-609. The trial court sentenced the Defendant to four years incarceration, suspended. On February 26, 2002, the Defendant was arrested pursuant to a capias issued for a probation violation. On April 5, 2004, the trial court ordered the Defendant's probation revoked and ordered that the judgment entered against the Defendant "be Ordered into execution, with credit for time served."

On February 14, 2005, the Defendant filed pro se a "Notice of Appeal" which references "Post-Conviction # 252118." However, the "technical record" before this Court does not contain a post-conviction petition. The Notice of Appeal also includes the reference "Dismissed 1 February

2005.” Further, the Defendant states in his pro se appellate brief that “the circuit court properly dismissed issues regarding [the underlying] case . . . as untimely under post conviction statutes” However, the technical record before this Court does not contain any order by the trial court disposing of the alleged post-conviction petition.

Our Rules of Appellate Procedure provide that a “defendant may . . . appeal as of right from an order denying or revoking probation, and from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding.” Tenn. R. App. P. 3(b). However, the record before this Court contains no final judgment in the Defendant’s alleged post-conviction proceeding. Accordingly, we are compelled to dismiss the Defendant’s appeal. See James Burns v. State, No. M2004-00793-CCA-R3-PC, 2005 WL 850384, at *1 (Tenn. Crim. App., Nashville, March 29, 2005) (dismissing appeal where record contained no final order from trial court denying defendant’s petition for post-conviction relief); Robert Finney, Jr. v. State, No. 01C01-9610-CR-00417, 1997 WL 602899, at *2 (Tenn. Crim. App., Nashville, Sept. 30, 1997) (dismissing appeal from alleged dismissal of defendant’s post-conviction petition where record contained no order or judgment dismissing the petition).

The Defendant’s appeal is dismissed.

DAVID H. WELLES, JUDGE